

§ 35.13

(a) Age is used as a measure or approximation of one or more other characteristics;

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;

(c) The other characteristic(s) can reasonably be measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

§ 35.13 Exceptions to the rules against age discrimination: reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 35.10, if that action is based on a factor other than age, even though the action may have a disproportionate effect on persons of different ages. An action is based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 35.14 Burden of proof.

The recipient has the burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 35.12 and 35.13.

§ 35.15 Remedial action.

Even in the absence of a finding of discrimination, a recipient, in administering a program, may take steps to overcome the effects of conditions that resulted in a limited participation on the basis of age. Nothing in this section will permit any otherwise prohibited use of age distinctions that have the effect of excluding individuals from, denying them benefits of, subjecting them to discrimination under, or limiting them in their opportunity to participate in any program or activity receiving Federal financial assistance from DOL.

§ 35.16 Special benefits for children and the elderly.

If a recipient is operating a program or activity that provides special bene-

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fits to the elderly or to children, the use of such age distinctions is presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of § 35.12.

§ 35.17 Age distinctions in DOL regulations.

Any age distinction in regulations issued by DOL is presumed to be necessary to the achievement of a statutory objective of the program or activity to which the regulations apply, notwithstanding the provisions of § 35.12.

Subpart C—Duties of DOL Recipients

§ 35.20 General responsibilities.

Each DOL recipient has primary responsibility for ensuring that its programs or activities are in compliance with the Act and this part and for taking appropriate steps to correct any violations of the Act or this part.

§ 35.21 Recipient responsibility to provide notice.

(a) *Notice to other recipients.* Where a recipient of Federal financial assistance from DOL passes on funds to other recipients, that recipient shall notify such other recipients of their obligations under the Act and this part.

(b) *Notice to beneficiaries.* A recipient shall notify its beneficiaries about the provisions of the Act and this part and their applicability to specific programs or activities. The notification must also identify the responsible employee designated under § 35.24 by name or title, address, and telephone number.

§ 35.22 Information requirements.

Each recipient shall:

(a) Keep such records as CRC determines are necessary to ascertain whether the recipient is complying with the Act and this part;

(b) Upon request, provide CRC with such information and reports as the Director determines are necessary to ascertain whether the recipient is complying with the Act and this part; and

(c) Permit reasonable access by CRC to books, records, accounts, reports, other recipient facilities and other sources of information to the extent

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CRC determines it is necessary to ascertain whether the recipient is complying with the Act and this part.

§ 35.23 Assurances required.

A recipient or applicant for Federal financial assistance from DOL shall sign a written assurance, in a form specified by DOL, that the program or activity will be operated in compliance with the Act and this part. In subsequent applications to DOL, an applicant may incorporate this assurance by reference.

§ 35.24 Designation of responsible employee.

Each recipient shall designate at least one employee to coordinate its compliance activities under the Act and this part, including investigation of any complaints that the recipient receives alleging any actions that are prohibited by the Act or this part.

§ 35.25 Complaint procedures.

Each recipient shall adopt and publish complaint procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Act or this part.

§ 35.26 Recipient assessment of age distinctions.

(a) In order to assess a recipient's compliance with the Act and this part, as part of a compliance or monitoring review, or a complaint investigation, CRC may require a recipient employing the equivalent of 15 or more full-time employees to complete a written self-evaluation, in a manner specified by CRC, of any age distinction imposed in its program or activity receiving Federal financial assistance from DOL.

(b) Whenever such an assessment indicates a violation of the Act or this part, the recipient shall take prompt and appropriate corrective action.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 35.30 Compliance reviews.

(a) CRC may conduct such compliance reviews, pre-award reviews, and

other similar procedures as permit CRC to investigate and correct violations of the Act and this part, irrespective of whether a complaint has been filed against a recipient. Such reviews may be as comprehensive as necessary to determine whether a violation of the Act or this part has occurred.

(b) Where a review conducted pursuant to paragraph (a) of this section indicates a violation of the Act or this part, CRC will attempt to achieve voluntary compliance. If voluntary compliance cannot be achieved, CRC will begin enforcement proceedings, as described in § 35.36.

§ 35.31 Complaints.

(a) *Who may file.* Any person, whether individually, as a member of a class, or on behalf of others, may file a complaint with CRC alleging discrimination in violation of the Act or these regulations, based on an action occurring on or after July 1, 1979.

(b) *When to file.* A complainant must file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. The Director may extend this time limit for good cause shown.

(c) *Complaint procedure.* A complaint is considered to be complete on the date CRC receives all the information necessary to process it, as provided in paragraph (c)(1) of this section. CRC will:

(1) Accept as a complete complaint any written statement that identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant;

(2) Freely permit a complainant to add information to the complaint to meet the requirements of a complete complaint;

(3) Notify the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure; and

(4) Notify the complainant and the recipient (or their representatives) of their right to contact CRC for information and assistance regarding the complaint resolution process.